

Outside Director and Proxy Holder Training:
Module 1: Intro to DSS and Foreign Ownership, Control, or
Influence (FOCI)

Defense Security Service
February 2014





Training Objectives

- DSS Agency
- DSS Mission
- DSS Operational Elements
- FOCI Organization
- FOCI Defined
- Why is FOCI Important
- Purpose of FOCI Mitigation
- FOCI Factors
- Identifying the Foreign Interest
- FOCI Process
- FOCI Lifecycle
- FOCI Mitigation Agreements
- Elements of FOCI Mitigation
- National Interest Determinations
- Key Individuals





DSS Agency

- The Defense Security Service (DSS) is an agency of the Department of Defense (DoD) headquartered in Quantico, Virginia with field offices throughout the United States.
- The Under Secretary of Defense for Intelligence provides authority, direction, and control over DSS.
- DSS provides the military services, defense agencies, 26 Federal agencies, and approximately 13,300 cleared contractor facilities with security support services.





DSS Mission

- Administer the National Industrial Security Program (NISP) on behalf of the DoD and 26 other Federal agencies
 - DoD 5220.22-M, National Industrial Security Program Oversight Manual (NISPOM)
- Support national security and the warfighter
- Oversee the protection of U.S. and foreign classified information in the hands of Industry
- Secure technology within the Defense Industrial Base (DIB)
- Serve as the DoD functional manager for the development and maintenance of an overarching DoD security training program
- Provide a center of excellence for security professionalization, education, and training for the DoD





FOCI Defined

“A U.S. company is considered under FOCI whenever a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of the U.S. company’s securities, by contractual arrangements or other means, to direct or decide matters affecting the management or operations of that company in a manner which may result in unauthorized access to classified information or may adversely affect the performance of classified contracts”

- DoD 5200.22-M, National Industrial Security Program Operating Manual (NISPOM) 2-300a





Purpose of FOCI Mitigation

- Purpose of FOCI Mitigation:
 - to reasonably and effectively deny the Affiliates* unauthorized access to classified information (as that phrase is defined in the NISPOM) and other information that is the subject of U.S. export control laws and regulations ("Export Controlled Information") and influence over the Company's business or management in a manner that could result in the compromise of classified information or could adversely affect the performance of contracts pursuant to which access to classified information may be required.

*As defined on slide 19





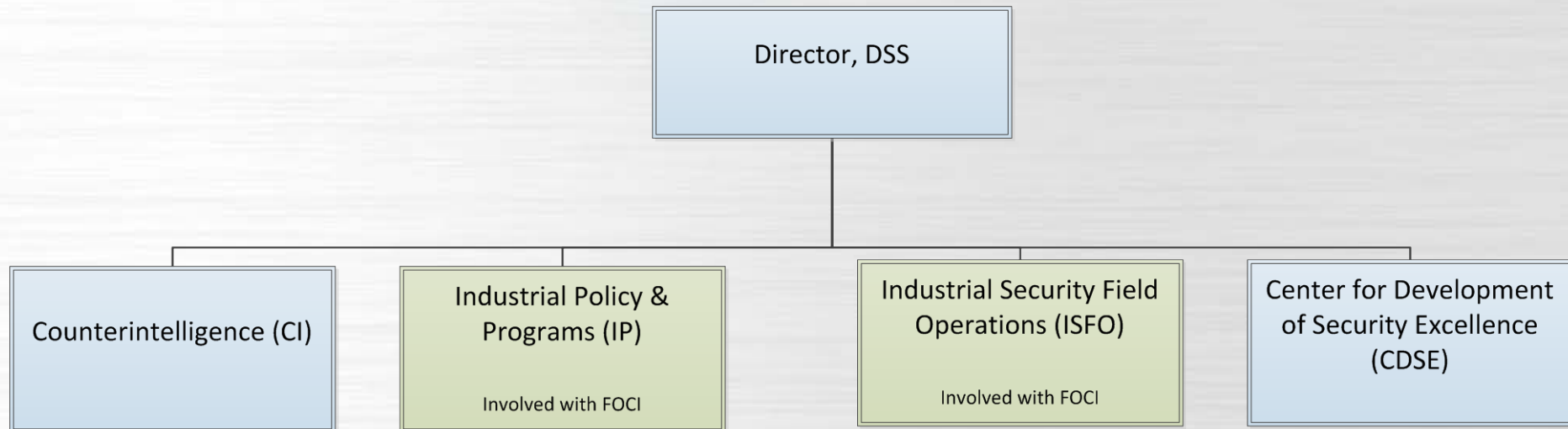
Importance of FOCI

- Foreign investment plays an important role in the U.S. industrial base. FOCI Mitigation Instruments allow for foreign investment to be consistent with the national security interests of the U.S.
- DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM) 2-102d requires that a company must not be under FOCI to such a degree that granting of the FCL would be inconsistent with the national interest.
 - DSS will determine when a FOCI Mitigation Instrument is required to ensure the FOCI is effectively mitigated and consistent with the national interest.
- Failure to effectively implement a FOCI Mitigation Instrument is likely to result in a determination that the Company has unmitigated FOCI, which may negatively impact the FCL status.





DSS Operational Elements

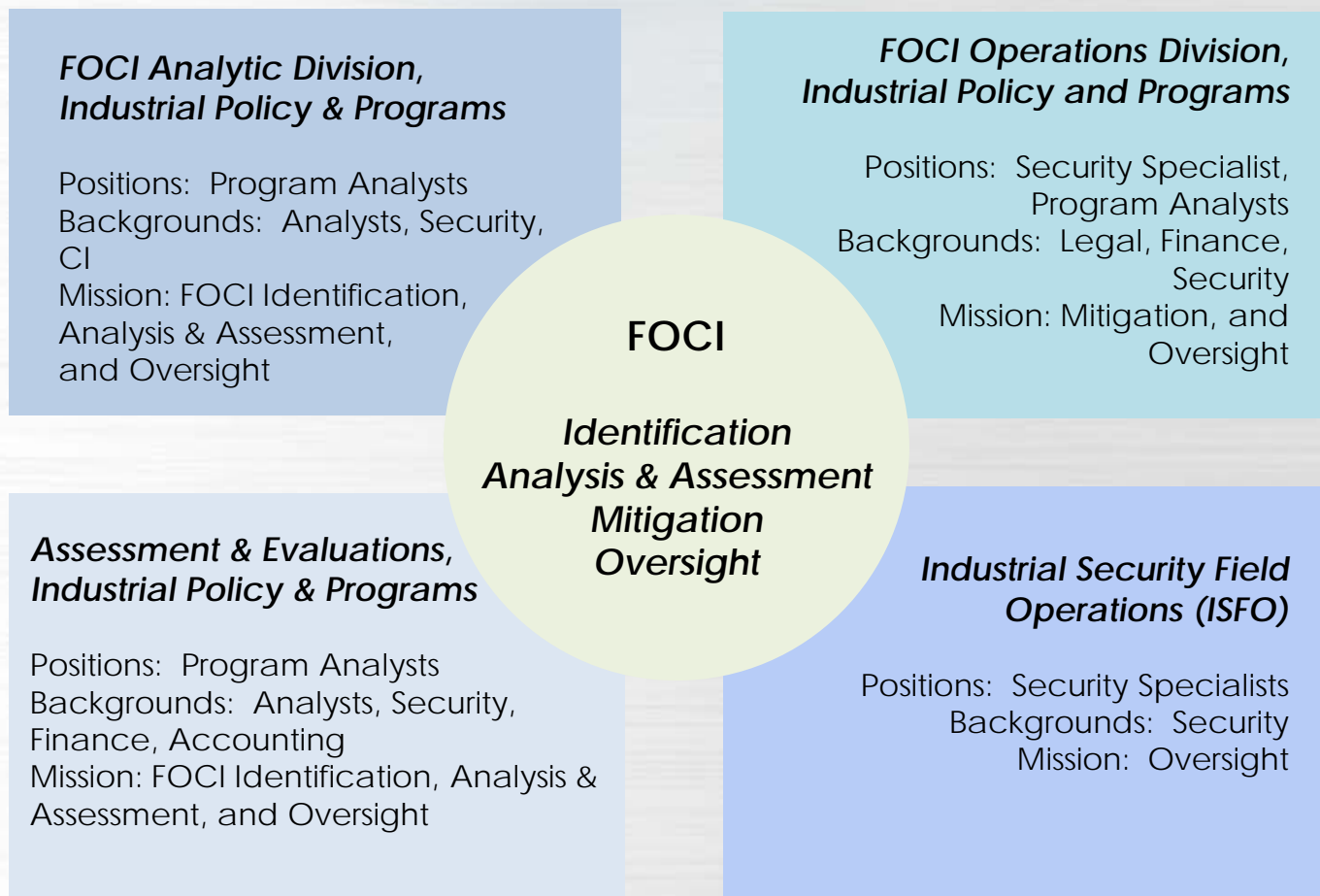


IP and ISFO are directly responsible for FOCI, but CI and CDSE provide support for the effective implementation of FOCI Mitigation Agreements





FOCI Organization





FOCI Factors

- Seven factors are considered in **aggregate** to determine whether a company is under FOCI and to what extent
- These factors relate to the company, foreign interest, and the government of the foreign interest*
 - a) Record of economic and government espionage against U.S.
 - b) History of cooperation on technology transfer
 - c) Type and sensitivity of information that will be accessed
 - d) Source, nature, and extent of FOCI
 - e) Company's record of compliance with U.S. laws, regulations, and contracts
 - f) Nature of bilateral or multilateral security agreements with the foreign government
 - g) Foreign government ownership or control

*DoD 5200.22-M, NISPOM 2-301a-g





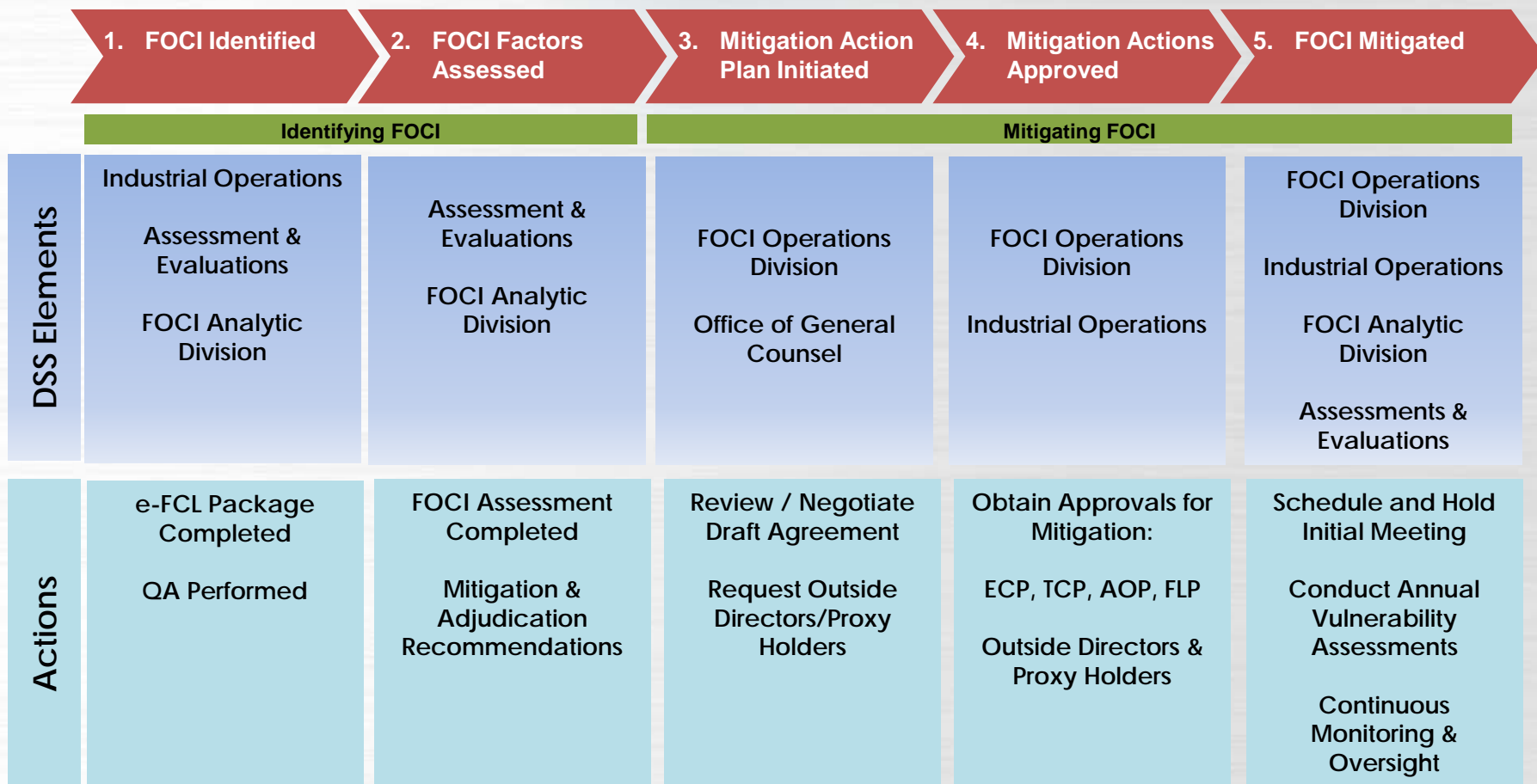
Identifying the Foreign Interest

- The Certificate Pertaining to Foreign Interest - Standard Form 328 (SF-328) – is a mechanism that provides details into the nature and extent of the foreign interests in a cleared company.
 - Identifies information on the Company's foreign ownership, if any
 - Identifies foreign interests, which could exert control and/or influence through a variety of means
- The nature, extent, and scope of the foreign interest(s) may impact the degree in which the FOCI Mitigated Company interacts with the Affiliates and understanding the relationship between the FOCI Mitigated Company and its foreign interest is integral in ensuring the FOCI is effectively mitigated.
 - Do not assume Minority Foreign Ownership/Control will only result in representation on the FOCI Mitigated Company's governing body
 - Minority and Majority Foreign Ownership/Control may result in significant relationships in the areas of cooperative commercial arrangements and shared services
 - Influence may arise through significant foreign revenue sources or foreign indebtedness in addition to traditional ownership/control





FOCI Mitigation Process



FOCI Lifecycle

Change Condition Amendment Renewal

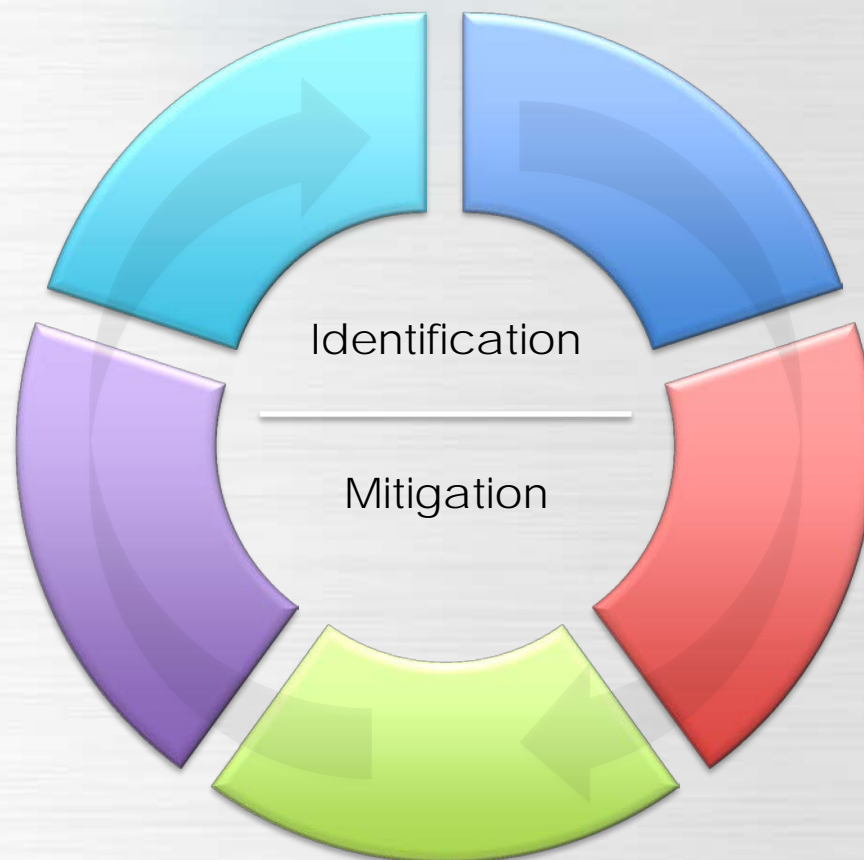
- E-FCL Package Completed
 - QA Performed

Involved: ISFO, FAD, AE

Identification & Assessment

- Mitigation and Adjudication Recommendations
 - FOCI Assessment Completed

Involved: ISFO, FAD, AE



Identification

Mitigation

Mitigation Oversight

- Conduct Annual Vulnerability Assessments
- Continuous Monitoring & Oversight

Involved: FOD, ISFO, FAD, AE

Mitigation Negotiations

- Review / Negotiate Draft Agreement
- Request Outside Directors / Proxy Holders

Involved: FOD

Mitigation Implementation

- Obtain Approvals for Mitigation, ECP, TCP, AOP, FLP and Outside Directors / Proxy Holders
 - Schedule and Hold Initial Meeting

Involved: FOD, ISFO



Mitigation Process for Companies under FOCI

- New Facility Security Clearances
 - In addition to the DoD 5220.22-M, NISPOM, facility eligibility requirements; the Company will not receive a clearance until the following FOCI requirements are met:
 - Executed Mitigation Instrument
 - Approved Electronic Communications Plan
 - Approved Technology Control Plan
 - Approved Affiliated Operations Plan (if applicable)
 - Approved Facilities Location Plan (if applicable)
 - Outside Directors/Proxy Holders Approved and Cleared
- Acquisition Cases
 - The Company's Facility Security Clearance will be invalidated unless a Commitment Letter with an acceptable FOCI Action Plan is approved by DSS in advance of the acquisition closing.
 - DSS, in its sole discretion, may invalidate a Company's Facility Security Clearance if it fails to meet the accepted timelines within its approved FOCI Action Plan





FOCI Mitigation Instruments

Minority Ownership/Control

- **Board Resolution (BR)**

- Foreign interest has minority ownership with a non-controlling interest with no right to appoint board members

- **Security Control Agreement (SCA)**

- Foreign interest has minority ownership **sufficient** to elect board members
- Requires disinterested, cleared, U.S. citizen Outside Directors equal to the number of Directors appointed by the Foreign Interest, Inside Directors

Majority Ownership/Control

- **Special Security Agreement (SSA)**

- Foreign interest has **majority** ownership and effectively controls company
- Requires more disinterested, cleared, U.S. citizen Outside Directors than Directors appointed by the Foreign Interest, Inside Directors
- Requires a National Interest Determination in order to access Proscribed Information*

- **Proxy Agreement (PA)/Voting Trust (VT)**

- Foreign interest has **majority** ownership and effectively controls company
- Requires foreign interest to convey most **voting rights**, independence
- Requires cleared, disinterested, U.S. citizen proxy holders with no Foreign Interest representation
- Requires shareholder approval on certain matters





Elements of FOCI Mitigation Agreements

- **Government Security Committee (GSC)***

- Permanent committee of the Board responsible for the implementation of the FOCI Mitigation Agreement and NISPOM requirements
- Consists of all Outside Directors/Proxy Holders and other cleared board members
 - GSC Chairman – Must be an Outside Director/Proxy Holder
 - GSC Secretary – Must be a member of the GSC

- **Visitation Policy ***

- Routine Business Visits – May be approved by the Facility Security Officer if authorized in the FOCI Mitigation Agreement
- Non-Routine Business Visits – Approved by an Outside Director/Proxy Holder

- **Annual Meeting/Annual Implementation and Compliance Report ***

- Addresses compliance with the FOCI Mitigation Agreement
- The Annual Implementation and Compliance Report must be submitted by the GSC Chairman and Senior Management Official to DSS 30 days prior to the Annual Meeting
- Must address all items identified in the FOCI Mitigation Agreement and DoD 5200.22-M, NISPOM 2-308b

* Will be addressed further in Module 2





Elements of FOCI Mitigation Agreements Continued

- **Electronic Communications Plan (ECP) ***

- Demonstrates how the FOCI Company will monitor/control electronic communications – including the FOCI Company's unclassified network(s) - to ensure no unauthorized disclosure of classified or export controlled material

- **Technology Control Plan (TCP) ***

- Addresses how the FOCI Company will its export control program to ensure there is no unauthorized disclosure of classified or export controlled material

- **Affiliated Operations Plan (AOP) ***

- Addresses all the relationships between or among the FOCI Company and the Affiliates
 - Must identify potential risks and mitigation strategies to ensure full compliance with the FOCI mitigation agreement

- **Facilities Location Plan (FLP) ***

- Required when a FOCI Company is located in close proximity to an Affiliate
 - Demonstrates effective separation while establishing procedures to ensure full compliance with the FOCI mitigation agreement

* Will be addressed further in Module 2





National Interest Determinations (NID)

- For companies cleared under a Special Security Agreement (SSA) with requirement to have access to proscribed information, DSS determines the need for a NID and will coordinate the NID from the Government Contracting Activity (GCA).
- Proscribed Information includes:
 - Top Secret
 - Communications Security (COMSEC), excluding controlled cryptographic items when unkeyed or utilized with unclassified keys
 - Restricted Data (RD)
 - Special Access Programs (SAP)
 - Sensitive Compartmentalized Information (SCI)
- Access to new proscribed information is precluded until a NID is approved
- Managing the NID process is addressed further in Module 2





Significant FOCI Individuals

- **Facility Security Officer** – Primary advisor to the GSC on the implementation/effectiveness of FOCI Mitigation and the Company's security program.
- **Technology Control Officer** – Principle advisor to the GSC on matters related to the control of export controlled material.
- **Senior Management Official** (i.e. President/CEO) – Individual responsible for the day-to-day management of the Company.
- **Inside Director(s)** – Board representatives of the Foreign Interest for a Special Security Agreement or Security Control Agreement.
- **Affiliates** - The Ultimate Parent and each entity that directly or indirectly controls, is directly or indirectly controlled by (other than the FOCI Mitigated Company and its Controlled Entities), or is directly or indirectly under common control with the Ultimate Parent.





Significant FOCI Individuals continued. . .

- **FOCI Operations Division Action Officer (FOD AO)** – Primary DSS individual responsible for the negotiation of FOCI Mitigation Agreements (in coordination with the Office of General Counsel), determination on the effective implementation of FOCI mitigation, and determination of FOCI compliance.
- **DSS Industrial Security Representative (ISR)**– Primary DSS individual responsible for security matters at the cleared facility.
- **DSS Senior Regional Action Officer (SAO)**– Primary DSS individual responsible for coordinating National Industrial Security Program compliance, to include FOCI, within a region
- **DSS Information Systems Security Professional (ISSP)**– Primary DSS individual responsible for supporting classified IT systems and the Electronic Communications Plan.
- **DSS Field Counterintelligence Specialist (FCIS)** – Primary DSS individual responsible for providing threat briefings to the cleared facility and recipient of suspicious contact reporting.





References

- *FOCI Information*
- http://www.dss.mil/isp/foci/foci_info.html
- *FOCI Mitigation Instruments*
- http://www.dss.mil/isp/foci/foci_mitigation.html
- *FOCI Process In-process Companies*
- <http://www.dss.mil/isp/foci/in-process.html>
- *FOCI Process Acquisitions*
- <http://www.dss.mil/isp/foci/foreign-acquisitions.html>
- *FOCI Implementation Documents*
- <http://www.dss.mil/isp/foci/implementation-procedures.html>
- *NID Process*
- http://www.dss.mil/isp/foci/nat_interest_deter.html
- *Regulations*
- http://www.dss.mil/isp/fac_clear/download_nispom.html

